S.B. CIVIL MISC. APPEAL NO.969/2007
(Manjula Devi & ors. Vs. Makbool Ahmed & ors.)

Date of Order :: 3rd August 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Rajesh Panwar)
Mr.S.K.Sankhla) for the appellants.

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By way of this appeal the claimants, wife, three minor children and parents of the vehicular accident victim Mohan Lal seek to question the award dated 07.11.2006 made by the Motor Accidents Claims Tribunal, Sirohi in Claim Case No.87/2005 particularly in relation to the finding on contributory negligence of the victim as put by the Tribunal at 40%.

The claimants made the claim for compensation with the submissions that the accident occurred on 19.05.2005 at about 11 p.m. near Pipaliya on Abu Road-Karoti road when the victim Mohan Lal, while coming to his village Posintara from Ahmedabad on his motorcycle bearing registration No. GJ 1 BE 2719, rammed into the truck bearing registration No.GJ 8 U 1628 that was parked on the road without any indication; that at about 11 p.m. in the night, it was not possible for the victim motorcyclist to spot such a truck

stationed on the road; and that for omission of care and caution on the part of the truck driver, the victim riding his motorcycle hit against the truck and sustained severe injuries and succumbed on the spot. The claimants sought compensation in the sum of Rs.25,21,500/- claiming Rs.20,00,000/- towards loss of income with the submissions that the deceased was about 33 years of age and was earning as proprietor of his business in the name of Anmol Silk Palace at Ahmedabad dealing in suitings, shirtings, dress material, and sarees; and was the only bread-winner of the family.

The claim for compensation was contested by the insurer of the truck aforesaid. After framing of the relevant issues for determination of the questions involved in the case, and taking evidence adduced by the claimants (the non-applicant did not adduce any evidence), the Tribunal considered the questions relating to accident and responsibility thereto in issues Nos.1 & 5. The Tribunal did not accept the testimony of PW.2 Achla Ram who alleged himself to be an eyewitness of the incident for the reason that neither he was named as a police witness nor the first information report suggested any person being an eyewitness. The Tribunal, then, referred to the site inspection memo (Ex.4) and did not accept the submission of the claimants that the victim

could not spot the truck in the glare of the head lights of oncoming vehicles and observed that though no indicators were put on or around the truck parked on the road but motorcycle tyre marks available on the road were suggestive of the fact that the motorcyclist had already spotted the truck and attempted to bring the motorcycle to halt; and opined that the motorcycle was probably in a brisk speed and hence rammed into the truck . On these considerations the Tribunal put contributory negligence on the motorcyclist at 40%.

In relation to the assessment of loss, the Tribunal observed that there was no proof available on record regarding the income of the victim as suggested by the claimants but from the document Ex.23 it was established that he was engaged in cloths business and, therefore, put an estimate on his income at Rs.5,100/- per month; and after deducting one-third wherefrom and with application of multiplier 16, after taking age of the victim at 40 years with reference to the post mortem report, assessed pecuniary loss at Rs.6,52,800/- (3,400 x 12 x 16). The Tribunal allowed Rs. 15,000/- to the wife of the deceased towards loss of consortium; Rs. 10,000/- to each of the 3 children towards loss of love and affection of their father, and Rs.10,000/- to the mother of the deceased towards loss of services of her son (father of the deceased, claimant No.5, expired during

pendency of the claim application). The Tribunal further allowed Rs.5,000/- towards funeral expenses and Rs. 1,000/- towards transportation and in this manner assessed total loss to the tune of Rs.7,13,800/-; and thereafter allowed compensation at 60% thereof, i.e., Rs.4,28,280/-. The Tribunal further allowed interest @ 6% per annum.

Assailing the award aforesaid, learned counsel for the claimants strenuously contended that the finding on contributory negligence of the victim is entirely baseless for there being no evidence of any contribution of the deceased to the accident. Learned counsel submitted that in the admitted fact situation of the present case where the truck was found stationed on the main road in the late night at about 11 p.m. without any indication on the body of the truck or at the surroundings, obviously, the accident occurred for exclusive fault and negligence on the part of the truck driver and the Tribunal has been in error in putting contributory negligence on the victim at 40%. Learned counsel submitted in the alternative that even if it be considered that the deceased was driving his motorcycle in brisk speed, in the first place he cannot be faulted in maintaining speed on the main highway; and in any case, his negligence, if any, cannot be to the extent of 40% as assumed by the Tribunal.

Having examined the record of the case in its totality, this Court is clearly of the opinion that this appeal remains bereft of substance and deserves to be dismissed.

The finding on 40% contributory negligence of the deceased in the present case appears to be perfectly justified. From the site plan Ex.4, it emerges that the victim while riding his motorcycle had already spotted the truck in question from a distance of about 60 feet. It has been distinctly noted by the Investigating Agency that tyre marks of the motorcycle were available on the road from a point 'D' to the point of incident marked 'A'; and the distance between these points 'D' to 'A' was 60 feet. Though there is no doubt about the negligence and fault on the part of the truck driver who had parked the truck on the road without indication but, if the motorcyclist was unable to control his vehicle and bring it to halt even after attempting on brakes for 60 feet, and thus the motorcycle had dragged itself for 60 feet before hitting against the stationary truck, an inference is directly available that the motorcycle was not only in a brisk speed but was being driven on the highway in an uncontrolled manner. Therefore, the finding in the present case putting contributory negligence on the part of the victim at 40% cannot be said to be unjustified.

There is another significant aspect of the matter for which this Court is clearly of the opinion that the award in question does not require interference. The claimants alleged that the deceased was engaged in business and earning about Rs. 10,000/- per month; and stated that he was filing income tax returns and also stated his Permanent Account Number,in paragraph 7 of the claim application, as AABPC 3610 Q. When the claimants were possessed of such specific knowledge that the victim was an income tax assessee, and was filing tax returns, there appears no justification for not filing copies of such returns before the Tribunal for the purpose of assessment of the loss of income. Further, the claimants have not produced the accounts of the business the victim was said to be engaged in. For the claimants avoiding to produce relevant documentary evidence on record the only inference could be an adverse one, that if produced, such evidence would have gone against the claimants. The only document remotely indicative of the business of the victim is the document Ex.23 taken into consideration by the learned Tribunal, and the same is nothing but a certificate from the Shops and Commercial Establishment Department of the Ahmedabad Municipal Corporation. With reference to the said document, by no stretch of imagination any particular amount of income of the

deceased could be estimated.

Despite there being no evidence at all in relation to the income of the victim and in spite of the fact that the claimants choose not to produce relevant evidence, the Tribunal has put an estimate on his income at Rs.5,100/- per month. Such estimate appears to be exceedingly on the higher side and the resultant assessment of pecuniary loss at Rs.6,52,800/- stands much in excess of a reasonable estimate on that score. The Tribunal has further proceeded to allow an amount of Rs.55,000/- towards non pecuniary loss to the claimants. The assessment of loss as made by the Tribunal in this case is clearly on the higher side; and is rather too excessive.

It appears that after finding contributory negligence in the deceased, that is even otherwise writ large on the face of the record, the Tribunal, in order to allow the claimants a reasonable amount of compensation yet, and in order to mitigate against the effect of reduction because of such contributory negligence, has proceeded to be firstly make a higher estimate on the loss of the claimants and only thereafter deducted 40%.

This Court is satisfied that if the finding on contributory negligence stands and then the quantum of loss is assessed on relevant principles with reference to the material as produced, and as omitted to be produced, the ultimate

amount of compensation in this case could only be less than that has been awarded by the Tribunal.

Therefore, this appeal is bereft of substance and does not merit admission.

The appeal fails and is, therefore, dismissed summarily.

s.soni. **(DINESH MAHESHWARI),J.**